UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM PAT PRICE and R. GREGORY KALSOW

Appeal No. 2006-3414
Application No. 10/066,207
Technology Center 3600

ON BRIEF

Decided: November 28, 2006

Before OWENS, NAPPI, and FETTING, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1, 3, 4 and 6 through 30, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to presenting data, and more particularly, the invention relates to a system and method for ensuring presentation of embedded rich media. (Spec 1). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

> 1. A method for saving alternative presentation data, the method comprising:
>
> a. receiving a broadcast stream on a selected channel, the broadcast stream comprising a plurality of programming media segments and at least one rich media segment associated with the alternative presentation data, the at least one rich media segment and the associated alternative presentation data being embedded within the plurality of programming media segments;
>
> b. commencing presenting the at least one rich media segment on the selected channel; and
>
> c. saving the alternative presentation data associated with the at least one rich media segment if presenting the at least one rich media segment on the selected channel is interrupted prior to completely presenting the at least one rich media segment on the selected channel; and
>
> d. presenting the saved alternative presentation data associated with the rich media segment for a time period equivalent to an initial length of time for a presentation of the at least one rich media segment less a length of time that the at least one rich media segment has previously been presented.

PRIOR ART

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Plotnick	US 2002/0144262 A1	October 3, 2002 (November 14, 2001)
Bryant	5,652,615	July 29, 1997

REJECTION

Claims 1, 3, 4 and 6 through 30 stand rejected under 35 U.S.C. § 103(a) as obvious over Plotnick and Bryant.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the examiner's answer (mailed November 23, 2005) for the reasoning in support of the rejection, and to appellants' brief (filed September 22, 2005) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations that follow.

Claims 1, 3, 4 and 6 through 30 rejected under 35 U.S.C. § 103(a) as obvious over Plotnick and Bryant.

We note that the appellants argue these claims as a group. Accordingly, we select claim 1 as representative of the group.

Claim 1 is essentially a method of ensuring that some message in a medium stream is presented over the intended time period, even if diversion of the message is attempted. The examiner applies Plotnick, which describes a mechanism for

inserting alternative advertising in a program media stream during commercial skips, to show a process for ensuring that some message in a medium stream is presented upon such a diversionary attempt, but in Plotnick, the time period is generally not the same as that originally intended (Paragraph 59). Thus the examiner relies on Bryant, which shows a method of inserting parallel advertising messages within the same time slot between portions of a primary media stream, such as a movie, to show insertion of an alternate message for an intended time period (Summary of Invention, col. 2, lines 15-35).

The appellants argue

> The rejection of claims 1, 21, and 26 should be reversed because the examiner has incorrectly construed Bryant. Although Bryant discloses a broadcast system that broadcasts a plurality of programming media segments (program base segments 813 in FIG. 8) and a rich media segment (fill segment 812), Bryant does not disclose or suggest to display the entire fill segment 812 in the event the channel is interrupted. That is, Bryant does not disclose or suggest to display the fill segment 812 for a time period equivalent to an initial length of time for a presentation of the fill segment 812 less a length of time that the fill segment 812 has previously been presented.
>
> Bryant shows in FIG. 8 a method for a cable operator (CO) 820 to generate alternate fill segments 812 (C or D) and a mechanism for selecting between the alternate fill segments (C or D) to be displayed on a TV, such as a set top box (STB) 833 selecting fill segment D to be displayed on the TV as shown in FIG. 8. However, if the STB 833 selects fill segment D for display, and the user changes the channel on the TV, nothing in Bryant discloses or suggests to display the remainder of fill segment D either immediately, or at a later time. In Bryant, if the user changes the channel on the TV, the alternate fill segments would change relative to the newly selected channel (the remainder of fill segment D would not be displayed). That Bryant discloses to synchronize the fill segments to a common time base has

> nothing to do with the continued display of a fill segment (immediate or delayed) in the event the current channel is interrupted (e.g., when the channel is changed). The rejection should be withdrawn.
>
> (Br 4-5).

The examiner responds that

> In response to this argument, the examiner points out that Bryant was applied to show broadcast of composite programs including a primary program content such as a movie (a program base segment (813); Fig. 8), and a secondary program content such as advertisements (alternating fill segment (812)); wherein said alternating fill segment (812) comprises selectable advertisement segments (C and D). Said selectable advertisement segments (C and D are concurrently generated and synchronized to a common time-base (Figs. 3, 4 and 8; C. 4, L. 40-56; C. 8, L. 35-48). Said common time-base synchronization indicates that the presentation of each of said selectable advertisement segments (C and D) starts at the same time, lasts the same amount of time, and ends at the same time regardless which segment is selected for said presentation. This inherently indicates that if, during presentation of the alternating fill segment (812) including selectable advertisement segments C and D, the advertisement segment C is switched to the advertisement segment D, the time of presentation of the segment D would be equivalent to an initial length of time for a presentation of the advertisement segments C less a length of time that the advertisement segments C has previously been presented.
>
> (Answer 6-7).

Thus the critical issue is whether Bryant does indeed show presenting the saved alternative presentation data associated with the rich media segment for a time period equivalent to an initial length of time for a presentation of the at least one rich media segment less a length of time that the at least one rich media segment has previously been presented.

The examiner relies on the principal of inherency to show that this feature is found in Bryant. A reference includes an inherent characteristic if that

characteristic is the "natural result" flowing from the reference's explicitly explicated limitations. Continental Can Co. USA, Inc. v. Monsanto Co., 948 F.2d 1264, 1269, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991) (citations omitted). The examiner's argument postulates that "during presentation of the alternating fill segment (812) including selectable advertisement segments C and D, the advertisement segment C is switched to the advertisement segment D." (*supra*).

We simply find no suggestion, either pointed to by the examiner, or anywhere, in Bryant that this would ever occur. Bryant's segments C and D referred to by the examiner are alternate presentations that are to be inserted at predefined times in the main media stream. There is no suggestion that C and D are related by content such that any cross over between them would be desirable and certainly no suggestion that any cross over between them would ever be implemented. The description of segment mixing associated with this portion of Bryant at col. 8, lines 35-59, only suggests mixing between the primary media stream and one of the alternates, not between the multiple alternates themselves, and bears no discussion of a premature cessation of either stream.

Thus, the predicate for the examiner's argument for inherency is not present in the applied reference, Bryant. Therefore, we can not find that Bryant would necessarily show presenting the saved alternative presentation data associated with the rich media segment for a time period equivalent to an initial length of time for a presentation of the at least one rich media segment less a length of time that the at least one rich media segment has previously been presented. Therefore, we find the examiner's arguments to be unpersuasive.

Accordingly we do not sustain the examiner's rejection of claims 1, 3, 4 and 6 through 30 rejected under 35 U.S.C. § 103(a) as obvious over Plotnick and Bryant.

CONCLUSION

To summarize the rejection of claims 1, 3, 4 and 6 through 30 rejected under 35 U.S.C. § 103(a) as obvious over Plotnick and Bryant is not sustained.

REVERSED

TERRY J. OWENS)
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) BOARD OF PATENT
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